

FLETCHER D. FISHER

IBLA 81-628

Decided October 26, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring lode mining claim and millsites abandoned and void. I 13336.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Millsites: Generally -- Mining Claims: Millsites

The failure to file a copy of a notice or certificate of location for a millsite as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2 in the proper Bureau of Land Management office within the time period prescribed therein conclusively constitutes abandonment of the millsite by the owner.

APPEARANCES: Royce B. Lee, Esq., Idaho Falls, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Fletcher D. Fisher has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 25, 1981, declaring the Silver Bell lode mining claim and the Silver Bell millsites abandoned and void for failure to file timely a copy of a notice or certificate of location pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

The record indicates that a certificate of location for the Silver Bell lode mining claim, dated September 22, 1956, was filed in the official records of Custer County, Idaho. However, there is no evidence that the Silver Bell millsites were ever recorded there.

On September 12, 1977, a contest complaint was initiated by BLM on behalf of the Forest Service, U.S. Department of Agriculture, in part against the subject lode mining claim and millsites. The contest complaint was served on appellant on September 17, 1977, and on October 3, 1977, he responded.

There is no evidence that appellant has ever filed a notice or certificate of location as to either the lode mining claim or the millsites with BLM. In his statement of reasons for appeal, appellant contends that BLM failed to comply with the due process "requirements" of the U.S. Constitution by failing to provide notice and an opportunity to be heard and that BLM "erred" in finding that "the millsites" were not "duly recorded" with the county or with BLM.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires that the owner of an unpatented lode mining claim or millsite, located prior to October 21, 1976, shall file with BLM a copy of the official record of the notice or certificate of location "within the three-year period following October 21, 1976." The filing deadline was, therefore, October 22, 1979. See 43 CFR 3833.1-2(a). Failure to file timely the required instrument is deemed conclusively to constitute an abandonment of the mining claim or millsite under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

There is a question, however, whether the millsites were located prior to October 21, 1976. However, even assuming they were located on or about September 12, 1977, the date of the contest complaint, 1/ the result in this case does not change. Section 314(b) of FLPMA, supra, requires that the owner of a millsite, located after October 21, 1976,

1/ The Forest Service letter recommending initiation of the contest complaint stated, with respect to the millsites: "Proofs of labor filed indicate that millsites exist." Letter from Acting Regional Forester, Forest Service, to Idaho State Director, BLM, dated June 7, 1977.

shall file with BLM within 90 days after the date of location. See 43 CFR 3833.1-2(b). No notices of location have ever been filed for the millsites.

To the extent that the Departmental regulations have been considered by the courts, they have been upheld. Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). With regard to the statute, the Department, as an agency of the executive branch of the Government, is not the proper forum to decide whether an Act of Congress is unconstitutional. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

In the absence of evidence that appellant filed timely copies of notices or certificates of location, BLM properly declared the Silver Bell lode mining claim and millsites abandoned and void. Joseph Ojurovich, 55 IBLA 182 (1981); Robert G. Sunder, 52 IBLA 375 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

